

Securities and Exchange Commission

§ 239.12

§ 239.0-1 Availability of forms.

(a) This part identifies and describes the forms prescribed for use under the Securities Act of 1933.

(b) Any person may obtain a copy of any form prescribed for use in this part by written request to the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Any persons may inspect the forms at this address and at the Commission's regional and district offices. (See § 200.11 of this chapter for the addresses of SEC regional and district offices.)

[46 FR 17757, Mar. 20, 1981, as amended at 47 FR 26820, June 22, 1982; 59 FR 5945, Feb. 9, 1994]

Subpart A—Forms for Registration Statements

§§ 239.4—239.8 [Reserved]

§ 239.9 Form SB-1, optional form for the registration of securities to be sold to the public by certain small business issuers.

Small business issuers, as defined in Rule 405 (17 CFR 230.405 of this chapter), may use this form to register up to \$10,000,000 of securities to be sold for cash, if they have not registered more than \$10,000,000 in securities offerings in any continuous 12-month period, including the transaction being registered. In calculating the \$10,000,000 ceiling, issuers should include all offerings which were registered under the Securities Act, other than any amounts registered on Form S-8 (§ 239.16b).

[58 FR 26515, May 4, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form SB-1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 239.10 Form SB-2, optional form for the registration of securities to be sold to the public by small business issuers.

Small business issuers defined in Rule 405 (17 CFR 230.405 of this chapter) may use this form to register securities to be sold for cash. For further information concerning eligibility toward

this form see Item 10(a) of Regulation S-B (17 CFR 228.10 et seq.)

[57 FR 36473, Aug. 13, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form SB-2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 239.11 Form S-1, registration statement under the Securities Act of 1933.

This form shall be used for registration under the Securities Act of 1933 of securities of all issuers for which no other form is authorized or prescribed, except that this form shall not be used for securities of foreign governments or political subdivisions thereof.

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; 15 U.S.C. 77g, 77j, 77s(a); secs. 12, 13, 14, 15(d), 23, 48 Stat. 892, 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 3, 4, 5, 6, 10, 78 Stat. 565-568, 569, 570-574, 88a; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 28(c), 84 Stat. 1435, 1479; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155 (15 U.S.C. 78l, 78m, 78n, 78o(d), 1979))

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form S-1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 239.12 Form S-2, for registration under the Securities Act of 1933 of securities of certain issuers.

This form may be used for registration of securities under the Securities Act of 1933 which are offered or to be offered in any transaction other than an exchange offer for securities of another person by any registrant which meets the following conditions:

(a) The registrant is organized under the laws of the United States or any State or Territory or the District of Columbia and has its principal business operations in the United States or its territories;

(b) The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 (*Exchange Act*) or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act;

(c) The registrant:

(1) Has been subject to the requirements of section 12 of 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to section 13, 14 or 15(d) for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this Form; and

(2) Has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement) Rule 12b-25(b) (§240.12b-25(b) of this chapter) under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that rule; and

(d) Neither the registrant nor any of its consolidated or unconsolidated subsidiaries have, since the end of their last fiscal year for which certified financial statements of the registrant and its consolidated subsidiaries were included in a report filed pursuant to section 13(a) or 15(d) of the Exchange Act:

(1) Failed to pay any dividend or sinking fund installment on preferred stock; or

(2) Defaulted (i) on any installment or installments on indebtedness for borrowed money, or (ii) on any rental on one or more long term leases, which defaults in the aggregate are material to the financial position of the registrant and its consolidated and unconsolidated subsidiaries, taken as a whole.

(e) A foreign issuer, other than a foreign government, which satisfies all of the above provisions of these registrant eligibility requirements except the provisions in paragraph (a) of this section relating to organization and principal business shall be deemed to have met these registration eligibility requirements provided that such foreign issuer files the same reports with the Commission under section 13(a) or 15(d) of the Exchange Act as a domestic registrant pursuant to paragraph (c) of this section.

(f) If a registrant is a successor registrant it shall be deemed to have met conditions in paragraphs (a), (b), (c) and (d) of this section if:

(1) Its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor of forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or

(2) All predecessors met the conditions at the time of succession and the registrant has continued to do so since the succession.

(g) If a registrant is a majority-owned subsidiary which does not itself meet the conditions of the eligibility requirements, it shall nevertheless be deemed to have met such conditions if its parent meets the conditions and if the parent fully guarantees the securities being registered as to principal and interest. Note: In such an instance the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities.

(h) *Electronic filings.* In addition to satisfying the foregoing conditions of this section, a registrant subject to the electronic filing requirements of Rule 101 of Regulation S-T (§232.101 of this chapter) shall have filed with the Commission:

(1) all required electronic filings, including confirming electronic copies of documents submitted in paper pursuant to a temporary hardship exemption as provided in Rule 201 of Regulation S-T (§232.201 of this chapter); and

(2) all Financial Data Schedules required to be submitted pursuant to Item 601(c) of Regulation S-K (§229.601(c) of this chapter) and Item 601(c) of Regulation S-B (§228.601(c) of this chapter).

[47 FR 11451, Mar. 16, 1982, as amended at 56 FR 30055, July 1, 1991; 58 FR 14678, Mar. 18, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form S-2, see the List of CFR Sections Affected in the Finding Aids section of this volume.